

## **PUBLIC MEETING MINUTES**

August 11, 2011

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:05 a.m.

### **Members Present**

Anita I. Martinez, Chair  
Alice Dowdin Calvillo, Member  
Sally M. McKeag, Member  
A. Eugene Huguenin, Member

### **Staff Present**

Suzanne Murphy, General Counsel  
Les Chisholm, Division Chief, Office of General Counsel  
Shawn Cloughesy, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the June 9, 2011 Public Meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in June. Those were PERB Decision Nos. 2185-H, 2186-M, 2187-E, 2188-M, 2189-E, 2190-M, 2191-S, 2192-M and 2193-E. In Request for Injunctive Relief (I.R.) No. 600 (*UPTE-CWA Local 9119 v. Regents of the University of California (San Diego)*), the request was withdrawn, and in I.R. 601 (*International Association of Firefighters, Local 1319, AFL-CIO v. City of Palo Alto*), the request was withdrawn. A document containing a listing of the aforementioned decisions was made available at the meeting. A list containing the decisions is available on PERB's website.

**Motion:** Motion by Member McKeag and seconded by Member Dowdin Calvillo, to close the June 9, 2011 Public Meeting.

**Ayes:** Martinez, McKeag, Dowdin Calvillo and Huguenin.

**Motion Adopted – 4 to 0.**

Without objection, Chair Martinez adjourned the June 9, 2011 Public Meeting. She then opened and called to order the August 11, 2011 Public Meeting. Member McKeag led in the Pledge of Allegiance to the Flag.

### **Minutes**

**Motion:** Motion by Member Huguenin and seconded by Member McKeag, that the Board adopt the minutes for the June 9, 2011 Public Meeting.

**Ayes:** Martinez, McKeag, Dowdin Calvillo and Huguenin.

**Motion Adopted – 4 to 0.**

### **Comments From Public Participants**

Kevin Colburn, Representative for the California Teachers Association, introduced himself and welcomed Chair Martinez and Member Huguenin, and expressed that he looked forward to their work at the Board.

Member Dowdin Calvillo recognized recently retired Administrative Assistant Chris Wong. Ms. Wong retired after 35 years of service at PERB and 38 years total in State service. Member Dowdin Calvillo noted that Ms. Wong contributed greatly and had done a fantastic job in her work at PERB, and expressed her pleasure at having worked with Ms. Wong.

Chair Martinez seconded Member Dowdin Calvillo's accolades for Ms. Wong, noting that she and Ms. Wong were the last of the 1976 hires at PERB. Chair Martinez wholeheartedly agreed that Ms. Wong was a terrific employee and very instrumental in keeping things organized for the Board.

### **Staff Reports**

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

#### **a. Legal Reports**

Suzanne Murphy, General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Murphy recapped the following information since the Board's last Public Meeting in June. With respect to unfair practice charges during the months of June and July, Ms. Murphy reported that 166 new cases were filed with the General Counsel's office; 200 case investigations were completed; and a total of 79 informal settlement conferences were conducted by staff. She continued, stating her pleasure that even with the slight increase in case filings over the last two months and summer vacations, productivity in the General Counsel's Office is increasing and good progress is being made in the reduction of the backlog associated with

unfair practice charges. As Chair Martinez mentioned earlier, since the June Public Meeting, Ms. Murphy reported on the disposition of the two requests for injunctive relief which were filed.

1. *UPTE v. Regents of the University of California*, I.R. No. 600 (unfair practice charge no. SF-CE-987-H, filed June 8, 2011). The request was withdrawn without prejudice and the underlying charge was withdrawn pursuant to a settlement negotiated on June 14 by a PERB Regional Attorney.
2. *International Association of Firefighters, Local 1319 v. City of Palo Alto*, I.R. No. 601 (unfair practice charge no. SF-CE-869-M, filed August 1, 2011). After an early informal settlement conference on August 4, the request was withdrawn without prejudice and the charge was placed in abeyance pending a second meeting of the parties on September 13, 2011.

In terms of litigation since the June Public Meeting, one new litigation matter was filed against PERB, *City of Redding v. PERB* (Third District Court of Appeal, Case No. CO68825). In that case, the City filed a petition for writ of extraordinary relief seeking judicial review of PERB Decision 2190-M.

Regarding case determinations during the time period since the last Public Meeting, PERB received two final court rulings.

1. *PERB v. AFSCME Local 3299*, involving the Regents of the University of California (unfair practice charge no. SF-CO-168-H [I.R. Request 553]). The court entered a dismissal of the action on July 25 pursuant to a request filed by PERB. The case is now complete.
2. *County of Riverside v. PERB*, involving SEIU Local 721 (Fourth District Court of Appeal, Division 2, Case No. E051351). The court summarily denied the county's request for judicial review of PERB Decision No. 2119-M on August 1 and lifted a stay on the enforcement of the Board's decision that it had previously imposed. The case is also now complete.

Chief Administrative Law Judge Shawn Cloughesy reported on the activities of the Division of Administrative Law and stated that the Administrative Law Judge (ALJ) report had been distributed to the Board for its review. Mr. Cloughesy reported on three items.

First, Mr. Cloughesy reported that in early July, Eric Cu was hired as an ALJ. ALJ Cu has already issued one proposed decision and is setting his hearing calendar. Mr. Cloughesy stated that the division was very appreciative of this new hire, and looking forward to tackling and bringing back to normal the workload for ALJs in PERB's Glendale office.

Second, the division has issued seven proposed decisions, in comparison to July 2010 where there were one or two decisions issued. There were a total of 13 case closures by the end of

July, again compared to the same time last year where there were 5. With that, Mr. Cloughesy stated that the division is having an excellent start this fiscal year.

As to the third and final matter, Mr. Cloughesy reported that in Oakland and Sacramento cases are being set for formal hearing about 4-5 months from the date of informal conference. In the Glendale office, cases are being set about 3-4 months from the date of informal. In that office, the focus has been on filling ALJ Cu's caseload. He reported that in some cases there may be a delay experienced in setting the date for formal hearing due to ALJ Cu's handling of the case in his former position as a PERB Regional Attorney. Those cases are being split by having an ALJ from Sacramento travel to preside over the hearing or those hearing dates that cannot be covered are being set for a later date by ALJ Tom Allen. Mr. Cloughesy concluded that every effort is being made to shorten the time between when the informal conference is held and the first day of formal hearing is set.

c. Administrative Report

Chief Administrative Officer Eileen Potter reported that with the assistance of Chair Martinez, PERB has been working with the Department of Finance and the Governor's Office to fill much needed vacant positions.

Ms. Potter next reported that PERB's budget survived in its entirety; the budget is the same version submitted in the Governor's January 10 budget. She stated that there are some triggers in the budget that could hit the agency, possibly in January.

Ms. Potter continued that the lease on PERB's headquarters office in Sacramento had passed through the first three survey phases. She stated that at the conclusion of those surveys, the next step will be serious negotiation for the price of tenant improvements, and that the negotiations in Sacramento seem to be right on track. Ms. Potter stated that the lease negotiations in PERB's Oakland office were not quite as far along. In that office there is currently a tentative site visit scheduled to look at possible restructuring of the space to accommodate additional staff and equipment.

Ms. Potter reported that PERB successfully closed its year-end books on July 29<sup>th</sup>, which was two days early. The date for closure is August 1. She stated that this was quite an accomplishment given that she was working with a new accountant trainee.

Chair Martinez reported that PERB is exempt from unallocated cuts that were proposed under the Budget Act (\$187,000). Ms. Potter confirmed that under control section 3.91, PERB is exempt from those cuts.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported that the Legislative Report was circulated to the Board for its review. Mr. Chisholm made the observation that by the time the Board meets again, PERB will have the final outcome regarding legislation. He stated that the Legislature will reconvene on the following Monday, the last day for

passage of legislation this year will be September 9<sup>th</sup>, and that the last date for the Governor to take action on any legislation that is passed will be October 9<sup>th</sup>. He then reported on the following legislative activity since the last Public Meeting.

Assembly Bill 117 (Committee on Budget) adds a new section to the Trial Court Act and does not have any substantial effect on PERB's jurisdiction. This bill is an amendment to the Act that takes effect on January 1. The Act will be updated, along with the copies available on the PERB website, as of that date.

Assembly Bill 455 (Campos) which would have amended the Meyers-Milias-Brown Act (MMBA) was vetoed by the Governor in late July. That bill prescribed how local agency merit or personnel commission members should be appointed.

Assembly Bill 501 (Campos) amends the Educational Employment Relations Act with respect to the definition of exclusive representative and to the definition of public school employer. It is scheduled to be heard in Senate Appropriations on Monday, August 15.

Assembly Bill 646 (Atkins) amends the MMBA with respect to factfinding and will be heard also in Senate Appropriations on Monday, August 15.

Assembly Bill 1244 (Chesbro) expands, among other things, PERB's jurisdiction to deal with representation issues concerning self determination support workers. This is now a two-year bill and there is likely to be no further action on the bill this year.

Senate Bill 609 (Negrete McLeod) imposes an 180-day limit on the Board's consideration of appeals of certain representation issues or the ALJ decision will become final. The bill is pending a third reading in the Assembly. It is currently unknown what date the bill will be read.

Senate Bill 857 (Lieu) would prohibit, under all the statutes PERB administers, the awarding of damages in the case of a strike determined to be unlawful by PERB. The bill will be heard in Assembly Appropriations on Wednesday, August 17.

In answer to Chair Martinez's question, Mr. Chisholm confirmed that SB 609 (180-day limit regarding representation cases), because it has moved far enough along in the legislative process, will be a two-year bill. Mr. Chisholm stated that the bill is also eligible to be considered next year, it could pass this year, or it could not survive the process.

Mr. Chisholm will continue to monitor the aforementioned legislation and keep the Board apprised of future developments.

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Huguenin that the Legal (including General Counsel and Chief Administrative Law Judge), Administrative, and Legislative Reports be accepted and filed.

**Ayes:** Martinez, McKeag, Dowdin Calvillo and Huguenin.

**Motion Adopted – 4 to 0.**

**Old Business**

None.

**New Business**

None.

**General Discussion**

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through October 13, 2011 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member McKeag to recess the meeting to continuous closed session.

**Ayes:** Martinez, McKeag, Dowdin Calvillo and Huguenin.

**Motion Adopted – 4 to 0.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Anita I. Martinez, Chair